IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

Crl.MC.No. 196 of 2007()

CP.96/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM
CRIME NO. 569/06 OF KOLLAM EAST POLICE STATION

.....

PETITIONER:
---

1. SUNNY, S/O.JOSEPH, AGED 34 YEARS,
HOUSE NO.31, SANTHI NAGAR,
PULLIKKADA CHERRY, KOLLAM EAST VILLAGE.

2. JOSE, S/O.JOSEPH, AGED 33 YEARS,
HOUSE NO.31, SANTHI NAGAR,
PULLIKKADA CHERRY, KOLLAM EAST VILLAGE.

3. NIYAZ, S/O.ABDUL RAZAK, AGED 26 YEARS,
PUTHUVAL PURAYIDATHIL, PULLIKKADA CHERRY,
KOLLA EAST VILLAGE.

4. MURUKAN, S/O.SREENIVASAN, AGED 31 YEARS,
PUTHUVAL PURAYIDATHIL, PULLIKKADA CHERRY,
KOLLAM EAST VILLAGE.

5. VIJAYAKUMARI, D/O.SWARNAMMA, AGED 54
PUTHUVAL PURAYIDATHIL, PULLIKKADA CHERRY,
KOLLAM EAST VILLAGE.

BY ADV. SRI..SIJU KAMALASANAN
SRI.S.SUDHEESHKAR
SRI.A.MUHAMMED RAFFI

RESPONDENTS:

STATE OF KERALA, REP. BY SUB INSPECTOR OF
POLICE, KOLLAM EAST POLICE STATION THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 196 of 2007

- -

Dated this the 24th day of January, 2007

O R D E R

The petitioners are accused in a prosecution, inter alia, under Sections 324 and 308 r/w. 149 I.P.C. The petitioners were not arrested in the course of the investigation. Final report was filed. The learned Magistrate has registered the committal proceedings. At the initial stage, summons were issued to the petitioners. The petitioners allegedly appeared before the learned Magistrate. But apprehending that the learned Magistrate would not grant them bail, the offence under Section 308 I.P.C. being an offence triable exclusively by a Court of Sessions, the petitioners did not surrender before the learned Magistrate. Consequently non-bailable warrants were issued against the petitioners. They, in these circumstances, pray that directions under Section 482 Cr.P.C. may be issued in their favour to release them on bail when they appear before the learned Magistrate.

2. It is clear that the petitioners were not arrested during the pendency of the investigation. The learned Magistrate had at the first

instance chosen to issue only summons against the accused person. I must assume that the discretion under Section 204 Cr.P.C. has been exercised by the Magistrate in choosing to issue only summons and not warrants.

3. I have no reason to assume that the learned Magistrate would remand the accused to custody for the simple reason that one of the offences is triable by a Court of Sessions. It is trite that the mere fact that the offence is triable by a Court of Sessions does not take away the jurisdiction of the Magistrate to consider an application for bail, more so in a case where the investigator had not arrested the accused and the Magistrate at the first instance had chosen only to issue summons against the petitioners. A person coming to the Courts on receipt of summons should not normally be remanded to custody unless there are compelling reasons. I do not, in these circumstances, find any reason to conclude that the learned Magistrate would not consider the applications for bail on merits. The learned Magistrate must do the same.

4. This Crl.M.C. is accordingly dismissed, but with the observation that notwithstanding the fact that the offences include the offence under Section 308 I.P.C., the learned Magistrate must proceed to consider the applications for bail on merits cognizant of the fact that discretion has

already been exercised to issue only a summons under Section 204 Cr.P.C. Such petition must be disposed of on the date of surrender itself.

(R. BASANT)
Judge

tm